

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

**AA 35/10
5125008**

BETWEEN TIARE KELLEHER

 Applicant

AND WIRI PACIFIC LIMITED

 Respondent

Member of Authority: Leon Robinson

Submissions Received: 11 January 2010
 28 January 2010

Determination: 28 January 2010

DETERMINATION OF THE AUTHORITY AS TO COSTS

[1] By a Determination dated 14 December 2009, the Authority declined to make formal orders as sought by the applicant Ms Tiare Kelleher ("Ms Kelleher") to resolve the employment relationship problem between the parties.

[2] The respondent Wiri Pacific Limited ("Wiri Pacific") now seeks a contribution to its costs. The Authority is advised by responsible counsel that Wiri Pacific's actual costs are in the sum of approximately \$40,000.00. A contribution of \$12,000.00 to those actual costs is sought on the basis of a daily tariff of \$3,000.00 per day.

[3] Ms Kelleher submits the contribution sought is unreasonable. She says that Wiri Pacific is entitled to an award of costs but applying the tariff an award in the amount of \$7,500.00 would be reasonable.

[4] The investigation meeting proceeded over three full days.

[5] Wiri Pacific is to be regarded as the successful party and costs must follow that event.

[6] The Authority is provided with without prejudice correspondence between the parties. Wiri Pacific offered Ms Kelleher the sum of \$5,000.00 in full and final settlement. Ms Kelleher declined that offer of settlement. Wiri Pacific does not seek costs on an indemnity basis. It is accepted that Wiri Pacific has incurred costs it should not have.

[7] I consider a tariff approach is an appropriate basis on which to exercise the Authority's discretion and in the particular circumstances at a daily rate of \$3,000.00. I award Wiri Pacific costs of \$9,000.00 being three investigation meeting days at \$3,000.00 per day.

[8] In the principled exercise of my discretion **I order Tiare Kelleher pay the sum of \$9,000.00 to Wiri Pacific Limited as a contribution to its costs.**

Leon Robinson
Member of Employment Relations Authority